

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
October 26, 2006 Session

**REGINALD NAIRON v. HORACE JOEL HOLLAND, ET AL.**

**Appeal from the Circuit Court for Williamson County  
No. II-99608 Russ Heldman, Judge**

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**No. M2006-00321-COA-R3-CV - Filed on March 1, 2007**

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Reginald Nairon brought this action against Horace Joel Holland and Holland Medical Equipment, Inc., claiming intentional infliction of emotional distress and invasion of privacy resulting from “harassing and abusive” telephone calls made to the plaintiff by Mr. Holland and others connected with him. The trial court granted the defendants summary judgment. The plaintiff appeals. We vacate the trial court’s grant of summary judgment and remand for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court  
Vacated; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

David H. King, Franklin, Tennessee, for the appellant, Reginald Nairon.

Katherine A. Austin, Nashville, Tennessee, for the appellees, Horace Joel Holland and Holland Medical Equipment, Inc.

**OPINION**

**I.**

The plaintiff is a retired pharmacist who resides with his wife and adult son in Brentwood. The defendant Horace Joel Holland is a co-owner of the defendant Holland Medical Equipment, a Nashville-based company that rents medical equipment to private individuals. On October 26, 1998, Mr. Holland called the plaintiff’s residence seeking to reclaim possession of a wheelchair that had been rented to the plaintiff’s mother. Mr. Holland testified that he received information from employees of the facility where the plaintiff’s mother resided prior to her death that led him to believe that the plaintiff either had possession of the wheelchair or knew its location. The plaintiff told Mr. Holland that he had no knowledge regarding the whereabouts of the wheelchair. According to the plaintiff, Mr. Holland then became “very abusive,” stating that “he would ring [the plaintiff’s]

phone off the wall,” that “he would make [the plaintiff’s] life a nightmare,” that “[h]e would come after [the plaintiff] wherever [he] went,” and that “[h]e was going to get [the plaintiff] and [the plaintiff’s] brother.” The plaintiff responded by hanging up the phone. Mr. Holland immediately called back. The plaintiff testified that the phone rang “constantly” for the remainder of that day.

The plaintiff called the telephone company to discuss the situation and his best course of action. He testified that, at that point in time, he was “[j]ust annoyed” and thought Mr. Holland would simply get tired and quit calling. The plaintiff’s caller-id device listed the initial call from Mr. Holland as “anonymous.” According to the plaintiff, the caller-id identified 80% of the calls that followed the initial call as coming from Holland Medical Equipment. The remaining 20% were listed as “unavailable.” The telephone company was able to block all “anonymous” calls, but said that it could not block the “unavailable” calls. The plaintiff thought about changing his number but decided against it. The telephone company advised the plaintiff that he might want to call the police about the situation, but the plaintiff chose not to because he believed the calls would eventually stop. The telephone calls did not stop.

Within a few days of Mr. Holland’s initial phone call, the plaintiff became aware that his brother, who resided in Georgia, was also receiving constant calls and threats from the defendants. Mr. Holland left several hostile messages on the brother’s answering machine. Two of the messages to the brother, which were later transcribed, reflect the following statements by Mr. Holland:

### **First Message**

Mr. Nairon, let me make this real, real clear to you. I don’t know who you think you are, but you’ve got a piece of equipment that belongs to me. Don’t even deny it because I’ve got witnesses and signed documentation by you and your family that says you’ve got it. So I’m not gonna play around. Don’t try to jack me around. I’ll be all over you like you haven’t ever seen before. So if a little old wheelchair is worth that much to you, then you screw with me. *Because I’m coming after you buddy – you and your brother*, and I will get my wheelchair back. Because this is no longer a matter of business, you’ve turned it personal. You and your brother are the biggest jerks I’ve ever had the misfortune to come across. You have no respect for anyone around you. And you won’t pay your bills – you won’t even pay your momma’s bills. It’s no wonder your sister won’t have anything to do with you. It’s no wonder that the nursing home thinks you’re a bunch of crooks and now I think you’re a bunch of crooks. Well, I’m coming after you and I’m gonna report my wheelchair as stolen. And I’m gonna have the police come see you and I’m going to have the police come to your place of work. I’ll come to your place of work. But let me tell you something, you’ve opened up a can of worms and you’ve opened up a nightmare that you

won't even believe. You can't believe just how literally crazy I am. I'm coming after you bud. So jerk, you hang up on me again. I would suggest you find my wheelchair and arrange to get it back to me, because I will make your life a nightmare. I will ring your phone off the wall. I will call your boss, I will call your supervisor. I will wear you out. So jackass, let's play. Hey, this is fun for me, is it fun for you? Find my wheelchair and arrange to get it back to me or you've got a nightmare. Have a good one. I will be calling you back until you get this resolved. And I will be calling you back regularly until you get this resolved. Ball's in your court. So be afraid to answer the phone. Be afraid to answer the phone at home, be afraid to answer the phone at work, be afraid to answer the phone. I'm going to wear you out. I want my wheelchair. End of story. And if you're Billy-bad-ass, then come on to Nashville and come on and see us. You're a big man over the phone, you're a big man when you don't pay your momma's bills. Everybody thinks you're a jerk. Well I want my wheelchair, and you've just run into somebody that can be a bigger jerk than you ever even thought about being. So, I'll be in touch.

### **Second Message**

Mr. Nairon, this is Joel Holland of Holland Medical Equipment again. Surprised to hear from me I'm sure. Have you found my wheelchair yet? Well I sure hope you find it soon. Because I'll tell you what. I'm going to wear your voice mail out and your phone out, and obviously the way you have your office set up to conduct business, I'm going to find you nowhere, no matter where you are in the United States. So if my little old wheelchair happens to be that important to you. 'Cause you're not gonna bully me. So you may bully other people you may bully your sister, you probably bullied your mother, but you're not going to bully me. 'Cause I push back . . . and I play real mean. So you want to mess with me, fine. If you want me off your back then return my wheelchair. I would suggest that you find it. Because I guarantee you I will cost you more in lost time, effort and energy than you can ever imagine. I'll make things very uncomfortable until you return my equipment to me. As of right now you have stolen a piece of equipment that belongs to me. So anyone that would steal something what does that make them? And then to have the unmitigated audacity to hang up on me and my personnel when we try to recover product that belongs to us. Uhm, Uhm, Uhm. I hope you don't have a preacher 'cause your preacher will be real disappointed in you. I'm glad your mother's not around

to see how her boys turned out, because she would probably would be real disappointed in you also. Like I said son and I imagine you are considerably older than me, but obviously not wiser, and obviously a jerk. *I'm go[ing] to continue to wear you and your brother out until I get my product back.* I want my product. I want my wheelchair. I want all the access[o]ries and accouterments that go along with it. Then if you've got a problem with this then you call me. Oh but you're billybad on the phone. That's right you hang up, you don't have time to discuss anything with a peon such as myself. Your brother don't have time. I don't know what his – (Message terminated by answering machine).

(Emphasis added).

The plaintiff and his wife testified that, over the next several months, they received “hundreds” of “harassing” phone calls from Mr. Holland and other representatives of Holland Medical Equipment. The plaintiff estimates that the most calls received from the defendants in a one-day time period was around 40. He estimates that the fewest number of calls received from the defendants in any one day was two. The plaintiff frequently chose not to answer the phone when he received a call from the defendants, thereby permitting the phone to ring until the other party hung up. The plaintiff claims that the longest continuous period of time that the phone rang was “[w]ell past an hour.” He states that when he tired of hearing the phone ring, he picked up the receiver and laid it down on a table or chair. He also states that he frequently picked up the receiver and listened to the caller without saying a word. Sometimes, he heard a radio playing and a whistle sound. Other times, he heard an individual making threats and remarks similar to those made by Mr. Holland in his initial call to the plaintiff and similar to the content of the messages recorded by his brother. The plaintiff identified the voice on the other end of the line as Mr. Holland’s voice. Due to the defendants’ constant calls, the plaintiff was forced to unplug the phone each night and plug it back in the next morning.

The plaintiff testified that, on March 9, 1999, he saw a truck owned by Holland Medical Equipment parked outside his residence. The defendants deny that they ever parked a truck outside the plaintiff’s house. The plaintiff did not speak with anyone inside the truck, and no one from the truck knocked on the plaintiff’s door or rang the plaintiff’s doorbell. The plaintiff could not state how long the truck was parked outside his house.

In March, 1999, the plaintiff’s brother filed a lawsuit against the defendants. The plaintiff states that the defendants’ constant telephone calls to his residence abruptly ceased after his brother filed suit. On October 25, 1999, the plaintiff filed this action against the defendants, asserting claims for intentional infliction of emotional distress and invasion of privacy. The plaintiff claims, *inter alia*, that the defendants’ conduct denied him the effective use of his telephone for a substantial length of time, caused him to purchase additional surveillance capabilities and caller-ids, and caused him “significant emotional and physical distress.” The trial court granted the defendants summary

judgment and dismissed the plaintiff's complaint. In its order granting summary judgment, the court emphasized the fact that "[i]n [the plaintiff's] deposition, [he] denies ever[] having any medical treatment for a psychiatric or psychological problem, denies being treated for any health problems since [the defendants'] phone calls began and also denies being on any medication." This appeal followed.

## II.

The plaintiff contends that there are genuine issues of material fact in this case that render summary judgment inappropriate. He claims that the testimony in the record favorable to him supports the allegations of the complaint.

## III.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. Courts "must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence." *Byrd v. Hall*, 847 S.W.2d 208, 210-11 (Tenn. 1993). "The evidence offered by the nonmoving party must be taken as true." *Id.* at 215. Summary judgment should be granted "when both the facts and the conclusions to be drawn from the facts permit a reasonable person to reach only one conclusion." *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995) (citation omitted). Since summary judgment presents a pure question of law, our review is *de novo* with no presumption of correctness as to the trial court's judgment. *Gonzales v. Alman Constr. Co.*, 857 S.W.2d 42, 44 (Tenn. Ct. App. 1993). The only evidence that can be considered in the summary judgment analysis is evidence that would be admissible at trial. *Byrd*, 847 S.W.2d at 215-16.

## IV.

We first address the propriety of the trial court's grant of summary judgment with respect to the plaintiff's intentional infliction of emotional distress, or outrageous conduct,<sup>1</sup> claim. Under Tennessee law, there are three elements of a claim for intentional infliction of emotional distress: "(1) the conduct complained of must be intentional or reckless; (2) the conduct must be so outrageous that it is not tolerated by civilized society; and (3) the conduct complained of must result in serious mental injury." *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). The legal principles involving the tort of outrageous conduct are succinctly set forth in *Alexander v. Inman*, 825 S.W.2d 102 (Tenn. Ct. App. 1991):

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<sup>1</sup>Outrageous conduct and intentional infliction of emotional distress are different names for the same cause of action. *Bain v. Wells*, 936 S.W.2d 618, 622 n.3 (Tenn. 1997). Thus, the two names are used interchangeably.

The Tennessee Supreme Court first recognized the tort of outrageous conduct in *Medlin v. Allied Inv. Co.*, 217 Tenn. 469, 478-79, 398 S.W.2d 270, 274 (1966). . . .

Establishing a test or legal standard for determining whether particular unseemly conduct is so intolerable as to be tortuous has proved to be difficult. *Byran v. Campbell*, 720 S.W.2d 62, 64 (Tenn. Ct. App. 1986). However, the test often used by our courts is the one found in Restatement (Second) of Torts § 46 comment d (1964) which states, in part:

The cases thus far decided have found liability only where the defendant's conduct has been extreme and outrageous. It has not been enough that the defendant has acted with an intent which is tortuous or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a decree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

*Alexander*, 825 S.W.2d at 104-05. Comment d further provides that "[t]he liability [for this cause of action] clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities."

The case of *Moorhead v. J.C. Penney Co.*, 555 S.W.2d 713 (Tenn. 1977), provides additional guidance in the instant case. The husband and wife plaintiffs in that case maintained a charge account with the defendant department store. *Id.* at 714. At one point, the plaintiffs returned an item to the store and were told by the defendant's employees that they would be given a credit for the returned item in the amount of \$16.78. *Id.* Because of a billing and accounting mistake made by the defendant, the plaintiffs' next monthly statement indicated that they had a charge of \$16.78, rather than a credit. *Id.* The plaintiffs repeatedly brought the error to the defendant's attention and were assured by the defendant's employees that the error would be corrected. *Id.* at 714-15. The error, however, was not corrected, and the plaintiffs began receiving "threatening letters" requesting the payment of the charge on almost a daily basis. *Id.* Eventually, the charge was mistakenly doubled and, including finance charges, amounted to \$38.12. *Id.* at 715. According to the plaintiffs,

the defendant threatened to call the plaintiffs' place of business, list the plaintiffs as delinquent with the local credit union, take immediate court action, and terminate the plaintiffs' credit privileges. *Id.* at 716.

The plaintiffs in *Moorhead* filed suit relying on the theory of outrageous conduct. *Id.* at 715-16. They alleged that the defendant's conduct and threats caused "severe emotional distress, exasperation, physical irritability, and nervousness, headaches, anger, and frustrations." *Id.* at 716. Specifically, the plaintiffs alleged that the defendant's conduct forced them to worry about their credit reputation and the possibility that the situation would limit job opportunities and job advancement. *Id.* The plaintiffs also alleged that the defendant's conduct and threats led to "considerable friction and argument [between the two of them], causing great family discord, threats regarding their marital status, and caused both parties to be greatly upset, emotionally distressed, and physically nervous and not well." *Id.* The trial court dismissed the complaint, holding that it failed to state a cause of action upon which relief could be granted. *Id.* at 714.

The Supreme Court reversed, finding that the plaintiffs' allegations stated "a cause of action for intentional or reckless infliction of severe emotional distress by means of extreme and outrageous conduct." *Id.* at 717. In so finding, the High Court stated the following:

In our view, a jury could reasonably conclude that the conduct of the defendant, considered as a whole, was extreme, outrageous and intolerable in present day society; and, that the mental and emotional injuries alleged by the plaintiffs to have resulted from defendant's conduct are serious. In reaching this conclusion we consider certain aspects of the defendant's conduct, as alleged, to be especially significant. First, is the fact that defendant's threatening letters, telephone calls, etc., continued long after defendant had acknowledged that its accounts were in error and that plaintiffs owed it nothing. . . .Next, we regard as significant (1) the long duration of defendant's course of conduct which is alleged by the plaintiffs to be "for more than one year" and (2) the volume of the threatening letters and bills, alleged to be "some 42" in number. Finally, we regard as significant the threats to deliberately injure the plaintiffs' credit reputation and jeopardize their job security.

*Id.* Although the procedural context in the *Moorhead* case is different from the instant case in that *Moorhead* involved a dismissal of the plaintiffs' complaint for failure to state a claim, as opposed to a grant of a motion for summary judgment, the facts and legal analysis in the *Moorhead* case are clearly instructive.

The first required element for an intentional infliction of emotional distress claim – *i.e.*, the requirement that the defendants' conduct be intentional or reckless – does not require much discussion. The plaintiff testified that Mr. Holland threatened to "ring [his] phone off the wall," to

“make [his] life a nightmare,” to “come after [him] wherever [he] went,” and “to get [him] and [his] brother.” If this testimony is taken as true, which is required in the summary judgment analysis, one could reasonably conclude that Mr. Holland, in making these threats, *intended* to cause severe emotional distress to the plaintiff.

The second element – *i.e.*, the requirement that the defendants’ conduct be “so outrageous that it is not tolerated by civilized society” – requires a bit more discussion. The defendants argue that “[e]ven taking the plaintiff’s claims as true, a multitude of calls, which did not even prompt the plaintiff to change his telephone number or call the police, does not rise to the level of outrageous conduct.” We disagree.

The plaintiff testified that he told Mr. Holland that he had no knowledge of the whereabouts of the wheelchair in their initial phone conversation. He stated that the defendants telephoned his residence “hundreds” of times beginning in late-October, 1998 and ending in early-March, 1999. The plaintiff testified that, on some days, the defendants would call his residence as many as 40 times. He stated that the defendants would allow the phone to ring for incredibly long periods of time, and that when he did pick up the receiver and listen to the caller, he either heard whistle sounds, a radio playing, or Mr. Holland threatening him in a manner similar to the initial call and the messages left on his brother’s answering machine. The plaintiff further testified that, on at least one occasion, the defendants parked a vehicle outside his residence. The fact that the plaintiff chose not to change his telephone number or call the police is not determinative of the merits of his claim. We find that, when the plaintiff’s evidence is taken as true, the threats and the extreme duration and volume of telephone calls made by the defendants could lead a jury to “reasonably conclude that the conduct of the defendant[s], considered as a whole, was extreme, outrageous and intolerable in present day society.” *Id.*

The final required element for an intentional infliction of emotional distress claim – *i.e.*, the requirement that the defendants’ conduct result in “serious mental injury” – appears to be the element upon which the trial court largely based its grant of summary judgment. “A ‘serious’ or ‘severe’ emotional injury occurs ‘where a reasonable person, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case.’” *Camper v. Minor*, 915 S.W.2d 437, 446 (Tenn. 1996) (citations omitted). Comment j to the Restatement (Second) of Torts § 46 (1965) provides the following additional insight into this element:

Emotional distress passes under various names, such as mental suffering, mental anguish, mental or nervous shock, or the like. It includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. It is only where it is extreme that the liability arises. Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only where the distress inflicted is so severe that no

reasonable man could be expected to endure it. The intensity and the duration of the distress are factors to be considered in determining its severity. Severe distress must be proved; but *in many cases the extreme and outrageous character of the defendant's conduct is in itself important evidence that the distress has existed.*

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*It is for the court to determine whether on the evidence severe emotional distress can be found; it is for the jury to determine whether, on the evidence, it has in fact existed.*

(Emphasis added). Expert proof regarding the plaintiff's mental injury (*i.e.*, medical records or physician testimony) is not necessary to establish the "serious mental injury" element. **Miller v. Willbanks**, 8 S.W.3d 607, 616 (Tenn. 1999). The plaintiff's own testimony, other lay witness testimony, and evidence of physical manifestations of emotional distress (*e.g.*, nightmares, insomnia, and depression) may be used to establish the existence of a "serious mental injury." **Id.** at 615.

The defendants argue that "there is no genuine issue of material fact as to [the] plaintiff's claim of serious mental injury that would preclude summary judgment." We disagree. The plaintiff testified in his deposition that the defendants' constant telephone calls "caused [him] tremendous emotional and physical distress because [he] was being threatened." He stated that he was "afraid" of what Mr. Hollard might do. He stated that the defendants' conduct "disturbed [him] and [his] family significantly." When asked what physical manifestations he experienced as a result of the defendants' conduct, the plaintiff responded: "Loss of sleep. Number of things." When further asked to explain the physical manifestations he experienced besides loss of sleep, the plaintiff responded that he "could probably list a whole page full." He then stated that the defendants' conduct

affected [him] in every way, in every action [he] did. [He] just could not function in the manner that [he] was accustomed to functioning. It made [him] almost nonfunctional.

He later testified that the defendants' conduct kept him from participating in "[a] significantly large number of activities" and that he was "incapacitated." The plaintiff stated that, prior to the defendants' first telephone call, he played tennis, golf, bridge, and socialized with a large number of people, all of "[w]hich [he] was unable to do after [he] became so involved in this and so incapacitated."

In addition to the plaintiff's own testimony, the plaintiff's wife testified that this was a "very scary time" for the entire family. Also, one of the plaintiff's children testified that "[his] parents were very frightened" and that they "were very distressed over it because they considered Mr. Holland to be dangerous." The same child testified that he could remember one specific weekend

when he visited his parents' residence and they "just looked weary, very weary, very tired, very beaten," and that he "sensed the mood when [he] went in the house." Another child of the plaintiff testified that

there was evidence of emotional and physical stress just in their personal appearance and the fact that they were exhausted from having been up all night and they were very concerned even to the point of advising us to be very careful and cautious, that [Mr. Holland] could in fact be stalking us.

We find that the foregoing evidence regarding the effect of the defendants' conduct on the plaintiff – when taken as true – could lead a jury to reasonably conclude that the defendants' conduct resulted in "serious mental injury" to the plaintiff.

In summary, we conclude that a jury *could* reasonably find (1) that the defendants' conduct was intentional or reckless, (2) that the defendants' conduct was so outrageous that it is not tolerated by civilized society; and (3) that the defendants' conduct resulted in "serious mental injury." See **Bain**, 936 S.W.2d at 622. We hold, therefore, that the trial court erred in granting the defendants summary judgment on this claim.

## V.

The trial court did not expressly address the plaintiff's claim of invasion of privacy. However, in dismissing the plaintiff's complaint *in toto*, the court, in effect, determined that the defendants are entitled to summary judgment on both claims. We will now address the plaintiff's claim of invasion of privacy.

Tennessee has adopted the common law invasion of privacy tort described in the Restatement (Second) of Torts § 652B (1977). **Givens v. Mullikin**, 75 S.W.3d 383, 411-12 (Tenn. 2002); **Roberts v. Essex Microtel Assocs., II, L.P.**, 46 S.W.3d 205, 209-11 (Tenn. Ct. App. 2000). Section 652B provides, in pertinent part, as follows:

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

Comment:

a. The form of invasion of privacy covered by this Section does not depend upon any publicity given to the person whose interest is invaded or to his affairs. It consists solely of an intentional interference with his interest in solitude or seclusion, either as to his

person or as to his private affairs or concerns, of a kind that would be highly offensive to a reasonable man.

\* \* \*

d. There is likewise no liability unless the interference with the plaintiff's seclusion is a substantial one, of a kind that would be highly offensive to the ordinary reasonable man, as the result of conduct to which the reasonable man would strongly object. Thus *there is no liability for knocking at the plaintiff's door, or calling him to the telephone on one occasion or even two or three, to demand payment of a debt. It is only when the telephone calls are repeated with such persistence and frequency as to amount to a course of hounding the plaintiff, that becomes a substantial burden to his existence, that his privacy is invaded.*

(Emphasis added).

Again, the plaintiff testified that, from late-October, 1998 to early-March, 1999, the defendants telephoned his private residence "hundreds" of times. The plaintiff testified that, on occasion, the defendants would telephone his residence, and allow the phone to ring morning, day, and night. These allegations clearly rise to the level of "hounding" discussed above in comment d to Section 652B. The plaintiff, his wife, and their children testified that the defendants' constant telephone calls stressed and burdened the plaintiff's existence, causing the plaintiff to suffer from exhaustion and fear, to withdraw from social activities, and to lose sleep. We find that the plaintiff's evidence, taken as true, could lead a jury to reasonably conclude that the defendants intentionally intruded upon the plaintiff's seclusion in a "highly offensive" manner. There are genuine issues of material fact requiring a trial on the issue of whether the defendants are liable to the plaintiff for invasion of privacy. Accordingly, the trial court erred in granting the defendants summary judgment on this claim as well.

## VI.

The judgment of the trial court granting the defendants summary judgment is hereby vacated. This case is remanded to the trial court for further proceedings. Costs on appeal are taxed to the appellees, Horace Joel Holland and Holland Medical Equipment, Inc.

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CHARLES D. SUSANO, JR., JUDGE